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September 30, 2008

Chairman Kevin J. Martin
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

**Re: In the Matter of High-Cost Universal Service Support Federal-State Joint
Board on Universal Service, WC Docket No. 05-337, CC Docket No. 96-45**

Dear Chairman Martin:

The Universal Service for America Coalition ("USA Coalition" or "Coalition"),¹ by its attorneys, writes to encourage the Commission to ensure that universal service support is made available in a technologically and competitively neutral manner so that technological innovation can be implemented into the communications network as rapidly and efficiently as possible.² Allowing residents and businesses in rural, insular, and high-cost areas to select the services, technologies, and service providers of their choice is the best means for ensuring the vibrancy, robustness, and redundancy of the communications network.³

¹ The USA Coalition consists of eight of the nation's leading rural providers of wireless services, and is dedicated to advancing regulatory policies that will enable Americans to enjoy the full promise and potential of wireless communications, regardless of where they live and work. The members of the USA Coalition include Carolina West Wireless, MTPCS, LLC d/b/a Cellular One, Cellular South, Corr Wireless Communications, Mobi PCS, SouthernLINC Wireless, Thumb Cellular LLC and US Cellular.

² See Preamble, Telecommunications Act of 1996, P.L. 104-104, 100 Stat. 56 (1996) (explaining that the purpose of the 1996 Act is "to promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies").

³ See *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, CC Docket Nos. 96-98 and 95-185, 11 FCC Rcd 15499, ¶ 7 (Aug. 8, 1996) ("By reforming the collection and distribution of universal service funds, the states and the Commission would ensure that the goals of affordable service

I. THE RECORD DOES NOT SUPPORT THE CONCLUSION THAT RADICAL REFORM IS NECESSARY TO ADDRESS A CRISIS THREATENING THE FUND

A. No Crisis Threatens The Viability of the Fund

No evidence on the record supports the claim that the Commission must implement radical reform proposals because a crisis is threatening the viability of the Universal Service Fund (the "Fund"). The claim that the Fund faces a crisis is based solely upon the growth in the overall size of the fund and the unsupported assumption that the Fund will continue to grow at the same rate.⁴ However, the size of the Fund does not indicate whether or not a crisis threatens the Fund.⁵ The Commission instead must focus upon the true measure of fund viability: the amount individual users contribute to the Fund.⁶ By that measure, the Fund is not facing a crisis:

and access to advances services are met by means that enhance, rather than distort, competition.") (*Local Competition Order*). The Senate Committee Report, which discusses the background and need for the Telecommunications Act of 1996, stated:

Changes in technology and consumer preferences have made the 1934 Act a historical anachronism ... Since the 1970s, when competition first began to emerge in the markets for telephone equipment, information services, and long distance services, the FCC has struggled to adopt rules that recognize a need to reduce regulatory burdens, especially on new entrants.

S. Rep. No. 104-23, at 5 (1995).

⁴ *High-Cost Universal Service Support; Federal State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Order, 23 FCC Rcd 8334, 8334, ¶ 1 (rel. May 21, 2008) (characterizing growth of the Fund as "explosive") (*Interim Cap Order*); *High-Cost Universal Service Support; Federal State Joint Board on Universal Service*, , WC Docket No. 05-337, CC Docket No. 96-45, Notice of Proposed Rulemaking, 23 FCC Rcd 1467, ¶ 4 (2008) (noting that the Fund grew from \$2.6 billion in 2001 to \$4.1 billion in 2006) (*Identical Support Rule NPRM*); see also Comments of Rural Cellular Ass'n and the Alliance of Rural CMRS Carriers, *High-Cost Universal Service Support; Federal State Joint Board on Universal Service*, , WC Docket No. 05-337, CC Docket No. 96-45, 18-22 (filed Apr. 17, 2008) (arguing that short-term growth in the size of the Fund does not threaten its stability and that retention of the identical support rule will not cause significant growth of the Fund).

⁵ The increase in the size of the Fund is not itself problematic because the increase was offset almost entirely by an increase in the number of wireless telephone customers (both urban and high-cost) paying into the Fund.

⁶ Because end users ultimately bear the cost of universal service, an end user analysis is the only rational and legitimate metric for monitoring the viability of the high-cost support mechanism.

the evidence on the record demonstrates that the amount recovered from each end user will remain relatively constant or decrease.⁷

B. The Identical Support Rule Is Not The Cause of the Alleged Problems

Elimination of the identical support rule would not address the issues the Commission claims have led to the so-called “explosive” growth in the Fund. Apart from the natural and expected growth of the Fund due to the entry of competitive ETCs,⁸ fund growth can be attributed to the lack of support portability.⁹ The identical support rule, which merely ensures

⁷ Applying the latest contribution factor of 11.4 percent, assuming the average interstate traffic percentage of carriers to be approximately 12%, and including the Federal Subscriber Line Charge which adds approximately \$0.54 to the amount a consumer pays monthly for USF support, a wireline consumer with a \$50 phone bill pays a total of slightly more than one dollar of USF support each month. Similarly, a wireless consumer with a \$50 monthly bill pays \$2.11 to the USF. *Trends in Telephone Service*, Industry Analysis and Technology Division, WCB, Table 2.10 (Aug. 2008) available at <http://www.fcc.gov/wcb/iatd/trends.html>; *Universal Service: What are We Subsidizing and Why?: Hearings before the House Energy & Commerce Committee*, 110th Cong. 5 (June 21, 2006) (explaining that even local telephone subscribers that make no long distance calls pay \$0.54 per month into USF); cf. Ex Parte Comments of Vonage, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *IP-Enabled Services*, WC Docket No. 04-36, at fn. 5 (filed June 14, 2006) (using different assumptions [e.g., lower bills, higher interstate revenue percentages] to calculate that an average wireline carrier pays USF charges of \$1.38 per customer, a CMRS carrier pays \$1.21 per customer, and a VoIP carrier pays \$2.12 per customer).

⁸ Indeed, rapid growth of the Fund was to be expected in the early years of competitive ETC market entry, particularly in light of the rapid growth in new telecommunications services such as wireless services. Congress intended the Act to facilitate this entry: the Senate Committee Report for the 1996 Act noted in connection with the need to protect and advance universal service that Congress was opening up the local telephone market for competition by entities including “cable, wireless, long distance, and satellite companies, and electric utilities, as well as other entities.” S. Rept. 104-23, at 5. The Report also stated that the definition of universal service should be periodically updated in order to “ensure that all Americans share in the benefits of new telecommunications technologies. S. Rept. 104-23, at 27. The following paragraph mentioned that conduits could consist of “twisted pair wire, coaxial cable, fiber optic cable, wireless, or satellite system”. In other words, the Senate Committee expressly recognized and intended that universal service would include funding for competitive technologies.

⁹ Some parties also believe that fund growth is attributable in part to the inability of the Commission to impose a primary line restriction. The Coalition does not support imposition of a primary line restriction, and the record demonstrates that the lack of portability is the main cause of the issues the Commission seeks to address. In any event, Congress has prohibited the FCC from adopting a primary line restriction. P.L. 109-289,

that all ETCs receive the same amount of support on a per-line basis, does not itself cause fund growth.¹⁰ None of the proposed replacements for the identical support rule justify departure from the findings that led the Commission to adopt the identical support rule in the first place. As such, elimination of the identical support rule would be an arbitrary and capricious means for controlling fund size that would not address the causes of fund growth. Moreover, competitive ETCs are required to utilize all the support they receive only for the permitted purposes of universal service, and are subject to audit of their use of the funds provided. Accordingly, the Commission should, consistent with the Act's mandates, encourage competitive ETCs to build out rural infrastructure, which serves the public interest, rather than punish them for fund growth caused by the lack of support portability for incumbents, which merely creates incentives for incumbent ETCs to be inefficient.¹¹

C. The Commission Can Improve Efficiency Without Adopting Radical Reform Proposals

The Commission can improve the operation of the Fund without adopting radical reform proposals, the details of which have not been vetted through the rulemaking process. Specifically, the Commission can and should target universal service support more accurately. For example, the FCC could improve efficiency by making support fully portable for all carriers, not solely for competitive carriers as is the situation today.¹² Full portability of support would create the incentives for all ETCs to be as efficient and competitive as possible, which is the best

as amended by P.L. 110-5 (2007) and P.L. 110-92 (2007)(expiring on Nov. 16, 2007); see also S. Rept. 110-129 (proposing an extension of the prohibition through fiscal 2008, noting that the proposed primary line restriction would be "harmful to small businesses, especially in rural areas, which need a second line for a fax or for other business purposes."); S.Rept. 110-129, § 502.

¹⁰ Unlike incumbent ETCs, which receive full support regardless of the number of lines they serve, competitive ETCs receive support only for the lines they currently serve and lose support when they lose lines.

¹¹ The Act was intended "[t]o promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies." 1996 Act, Preamble.

¹² See, e.g., Ex Parte Presentation of Cellular South and Alliance of Rural CMRS Carriers to Commissioner McDowell's Staff, *High-Cost Universal Service Support*, WC Docket No. 05-337, *Developing a Unified Inter-carrier Compensation Regime*, CC Docket No. 01-92 (filed Sep. 16, 2008) (proposing full portability of support for all ETCs with an exception for small ILECs and retention of IAS and ICLS support to competitive ETCs); Ex Parte Presentation of US Cellular, *High-Cost Universal Service Support*, WC Docket No. 05-337 (filed Sep. 9, 2008) (same).

means for achieving the goals of the universal service provisions of the Telecommunications Act of 1996.

II. UNIVERSAL SERVICE REFORM MUST BE CONSISTENT WITH THE ACT

The 1996 Act “codified the historical commitment of the Commission and state regulators to promot[ing] universal service by ensuring that consumers in all regions of the nation have access to affordable, quality telecommunications services.”¹³ Before the Commission can determine which, if any, of the proposed reforms would best achieve the codified universal service commitment, the Commission must define key terms in the Act and adopt objective, measurable goals for universal service support that are consistent with the principles enumerated in the Act.¹⁴ Unfortunately, discussion of the Act’s requirements has been conspicuously absent both in the Commission’s NPRMs requesting comment on USF reform and the comments and ex parte filings of various parties proposing reforms. Failure to analyze proposed reforms under the framework of the current Act would lead to protracted appeals and further rebukes from the courts, which could harm the universal service program more profoundly than the issues the Commission now seeks to address.

The touchstone for the universal service program is the principle of “reasonable comparability” set forth in section 254(b)(3).¹⁵ When read in conjunction with the other principles enumerated in the Act, the goal for the universal service distribution mechanism should be that the choices available to consumers in rural, insular, and high-cost regions of the United States should be “reasonably comparable” to those available in urban areas with respect to the following factors:

¹³ *Federal-State Joint Board on Universal Service; High-Cost Universal Service Support*, Notice of Proposed Rulemaking, 20 FCC Rcd 19731, 19732, ¶ 2 (2005). As such, a major objective of the universal service provisions of the Act is to ensure the existence of affordable access to telecommunications services for consumers living in areas where the costs of services would otherwise be prohibitively high. *Federal-State Joint Board on Universal Service*, NPRM & Order, 17 FCC Rcd 2999, 3001, ¶ 3 (2002).

¹⁴ *See, generally, Qwest Commc’ns Int’l, Inc. v. FCC*, 398 F.3d 1222, 1234 (10th Cir. 2005) (*Qwest II*) (rejecting Commission’s USF definitions for failure to adequately consider all the principles enumerated in 47 U.S.C. § 254, including “reasonably comparable,” “just, reasonable and affordable,” and “sufficient”).

¹⁵ 47 U.S.C. § 254(b)(3). The Commission has found that “section 254(b)(3) reflects a legislative judgment that all Americans, regardless of income, should have access to the network at reasonably comparable rates.” *Federal State Joint Board on Universal Service; High-Cost Universal Service Support*, Notice Of Proposed Rulemaking, 20 FCC Rcd 19731, 19736-37, ¶ 10 (2005).

- **Service Types** – The FCC should conduct surveys to determine the types of services available in urban areas (e.g., voice, mobility, broadband, text messaging, etc.);
- **Service Providers** – The FCC should conduct surveys to determine the quantity of service providers available in urban areas;¹⁶ and
- **Service Rates** – The FCC should conduct surveys to determine average rates for supported services in urban areas by state, and then define rates within one standard deviation of rates for technologically similar services in urban areas to be “reasonably comparable” to urban rates, as well as “just, reasonable and affordable.”¹⁷

In order to achieve this goal, support must be made available on a technologically and competitively neutral basis in any rural, insular or high cost area where consumers do not have reasonably comparable access to any one of the factors.¹⁸ Where support is necessary, section 254(b)(5) of the Act mandates that it be:

- **Specific** – Clear and explicit, rather than implicit, support;¹⁹

¹⁶ See, e.g., *Federal-State Joint Board on Universal Service*, Recommended Decision, 12 FCC Rcd 87 at ¶ 23 (1996) (*Joint Explanatory Statement*) (cited in *First Report & Order*, 12 FCC Rcd at 8802, ¶¶ 47-48) (finding that Congress included the USF program as part of “a pro-competitive, de-regulatory national policy framework” and that competition must be fostered in a technologically and competitively neutral manner).

¹⁷ When rates in rural and urban areas are “reasonably comparable” in satisfaction of 47 U.S.C. § 254(b)(3), they are also “just, affordable and reasonable” for consumers in compliance with 47 U.S.C. § 254(b)(1). This proposal complies with the Tenth Circuit’s Order in *Qwest II*, and will ensure that prices in supported areas are no higher than prices of urban carriers whose rates are in the 83rd percentile. The Commission can choose (and has chosen) to address the issue of “affordability” in another way – through the Lifeline and Link-Up programs. The Commission created the Lifeline and Link-up programs for low-income consumers who might find local service rates unaffordable no matter where they live.

¹⁸ For example, if rates for consumers in a rural, high cost or insular area are not reasonably comparable to urban rates (i.e., the rates are not within one standard deviation of average urban rates in that state), support is necessary even if consumers in the area have access to reasonably comparable service types from a reasonably comparable number of service providers.

¹⁹ *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent LECs and IXC*s, 16 FCC Rcd 19613, 19621-22, 19642-46, ¶¶ 15, 62-68

- **Predictable** – Support that permits ETCs to make rational investment decisions because they can be calculated in advance; and
- **Sufficient** – Support which ensures that a reasonably comparable amount of service providers are capable of offering reasonably comparable services at reasonably comparable rates to consumer in rural, insular and high cost areas.²⁰

Only reform proposals that are consistent with these statutory mandates can be considered by the Commission in its efforts to improve the efficiency of the universal service program.

Recently, the FCC has improperly legislated in this area by adding a “sustainability” component to the mandates set forth in Section 254.²¹ Nowhere in the Act is the FCC authorized to limit the size of the Fund to a level below what is needed to provide sufficient support for rural consumers to receive the benefits promised in the Act.²² To date, growth in the Fund has been more than offset by increasing service availability and declining prices to consumers. For example, the price of a wireless minute of use has declined from nearly 30 cents per minute in 1999 to six cents today, largely as a result of the FCC’s decision to move universal service support contained in access charges over to IAS and ICLS. Yet in rural portions of many states, and particularly in those where wireless ETCs have been designated in recent years, the availability of high-quality wireless service is not yet adequate: universal service is still very much a current and present need.

III. THE FCC SHOULD NOT IMPOSE AN EXPENSIVE AND BURDENSOME COST STUDY REQUIREMENT UPON COMPETITIVE ETCs.

The Commission should reject calls to impose expensive and burdensome cost study requirements upon competitive ETCs.²³ Such a requirement would be an enormous undertaking for the Commission, as multiple carriers and multiple technologies will require a substantial

(2001) (expressing a preference for explicit rather than implicit universal service support) (*MAG Order*); see also 47 U.S.C. § 254(e).

²⁰ The Act prohibits the FCC from knowingly providing a level of support that is below the costs an ETC incurs to provide reasonably comparable services at reasonably comparable rates.

²¹ See, e.g. *High-Cost Universal Service Support*; *Federal-State Joint Board on Universal Service*, WC Docket No. 0-337, CC Docket No. 96-45, Order, FCC 08-122 (rel. May 1, 2008) (capping ETC support at current levels).

²² The Commission is, in fact, required to ensure that support is sufficient. 47 U.S.C. §§ 254(b)(5); 254(d), 254(e).

²³ *Identical Support Rule NPRM*, 23 FCC Rcd at 1475, ¶ 18.

bureaucratic effort to support the implementation, review, and dispute resolution process. The adoption of a cost study requirement would *increase* the cost of serving rural, high cost, and insular areas, and thus increase the amount of support necessary to achieve the Act's goals. Additionally, such a requirement would create disincentives for carriers to participate in the USF program in areas where support is necessary, which harms consumers. Both of these results are fundamentally inconsistent with the goals of the Act.²⁴ As such, the Commission cannot justify adopting a cost study requirement unless the record demonstrates the benefits of doing so substantially outweigh these significant detriments and thus cost studies for competitive ETCs are necessary.

Cost studies for competitive ETCs are unnecessary. The FCC's current rules require all ETCs to use USF support solely for the maintenance or expansion of the ETCs' networks.²⁵ To the extent the FCC believes that its current rules are not explicit enough regarding the manner in which support can be used, the agency could amend the rules to further clarify permissible uses of support. If the FCC instead believes that certain ETCs are not using support in accordance with its rules, the agency should simply audit those ETCs. Support that is used in accordance with the FCC's rules funds the expansion of networks and operations that serve the public interest and further the goals of the Act. There is a wealth of data on file with the FCC and virtually every state Commission that has designated competitive ETCs as to how those carriers are using support. Accordingly, the imposition of an expensive and burdensome cost study requirement solely for the purpose of determining a hypothetical per-line cost based upon an assumed subscriber count would serve no valid purpose.

To the extent the FCC nonetheless chooses to impose a new cost requirement upon competitive ETCs, the agency must (1) articulate the purpose allegedly served by the requirement and (2) demonstrate that the requirement is narrowly tailored to achieve that purpose in the least burdensome manner possible that is consistent with the requirements of the statute. A cost requirement could serve only two potential purposes: (1) to identify the costs that a competitive ETC is entitled to recover and/or (2) to prevent ETCs from over-recovering their costs.

²⁴ As noted *supra*, the Act was intended "To promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies." 1996 Act, Preamble. *See also, e.g.*, S. Rept. 104-23, at 5 ("... by permitting the FCC to forbear from regulating carriers when it is in the public interest, [the bill] will allow the FCC to reduce the regulatory burdens on new entrants"); 16 ("The legislation is designed to remove as many regulatory burdens as possible to allow for the development of a fully competitive marketplace in all sectors of the telecommunications industry.").

²⁵ *USF First Report & Order*, 12 FCC Rcd at 8932-34.

Identification of recoverable costs: If the primary purpose for imposing a cost study requirement is to identify costs eligible for recovery, then the FCC must permit full recovery of those costs in accordance with the statutory mandate that support be specific, predictable and sufficient. Additionally, to the extent the FCC subjects competitive ETCs to the type of cost study requirements that apply to incumbent ETCs, the statutory requirement that universal service mechanisms be competitively and technologically neutral mandates that all ETCs be permitted to recover their costs in the same manner. Specifically, competitive ETCs, like incumbent ETCs, would no longer be subject to portability of support, and thus they would be permitted to recover all of their eligible costs, including those that do not decrease when they lose "individual lines."²⁶ This would create an ironic situation in which both incumbent ETCs and competitive ETC's would now be compensated for customers who have switched carriers, and is yet another reason why the Coalition believes the current system is more efficient. In addition, if the FCC moves forward with cost submissions, it must also develop a benchmark for wireless service, as its current proposal to measure wireless costs against the wireline benchmark would base wireless support on wireline costs – again – precisely the situation that the FCC has identified as problematic.

Prevention of Cost Over-Recovery: If the primary purpose for collecting specific carrier cost information instead is to ensure that competitive ETCs are not over-recovering their costs, the FCC does not need to impose detailed and burdensome cost study, or cost tracking, requirements. Rather, the Commission could amend its current rules to make it easier to verify that all ETCs are not over-recovering their costs. Specifically, the Commission's current rules both specify how support can be used and require all ETCs to file with the Commission five-year plans such as those that CETCs are generally required to file with state commissions, describing proposed improvements and upgrades to their network. The Commission could amend its rules to require ETCs to submit expenditure projections as part of their five-year plans, which ETCs would update on an annual basis to reflect both changes in projections as well as specific expenditures made in accordance with the plan over the previous year. Support would still be distributed pursuant to the current system, but support would be capped for each individual ETC at the projected expenditure amount detailed in the ETC's report.

These proposed amendments would be just as effective in preventing over-recovery as detailed and burdensome cost study (or tracking) requirements, but they would be much less expensive and burdensome for the FCC to analyze and the ETCs to generate and file. Specifically, the FCC could determine from the face of the five-year-plan whether the proposed expenditures are consistent with the FCC's rules, which would be much easier than analyzing

²⁶ Conversely, to the extent the FCC decides to make support portable for both competitive and incumbent ETCs, cost information could be relevant only to prevent over-recovery of costs, for which detailed cost studies are unnecessary, for the reasons set forth below.

detailed cost studies.²⁷ Moreover, the five-year-plan and annual updates would make it easier for the FCC to verify that support is actually getting spent as reported, not to mention gathering detailed information about overall progress towards achieving the goals of the universal service provisions of the Act. To the extent necessary, the filings would also provide a much more useful roadmap for government review and audits. Under this proposal, the benefit to consumers of the Universal Service Fund is assured even as the costs, both to the participating carriers and to the Commission itself, are minimized.

IV. PROVIDING SUPPORT TO COMPETITIVE ETCs BASED UPON A PERCENTAGE OF INCUMBENT ETC COSTS, OR ELIMINATING SUPPORT ASPECTS SUCH AS ICLS OR IAS, WOULD BE ARBITRARY AND CAPRICIOUS

There is no rational basis for eliminating the identical support rule in favor of providing competitive ETCs with a fraction of the incumbent ETC's costs.²⁸ Doing so would continue to tie competitive ETC support to incumbent ETC costs, which would be fundamentally inconsistent with the alleged justification for eliminating the identical support rule, and fail to provide sufficient support to consumers as required by 47 U.S.C. § 254(b)(5).

Indeed, eliminating certain elements of universal service funding while retaining the identical support rule would be fundamentally inconsistent with the universal service provisions of the Act. Excluding competitive ETCs from certain support mechanisms like ICLS or IAS would violate competitive neutrality and erect barriers to entry in rural areas, thereby undermining the pro-competitive purposes of the Act and reducing marketplace pressures upon incumbents.²⁹ Currently, ICLS and IAS funding supports wireless carriers that provide service in rural, non-Bell areas. If this support is taken from wireless carriers, they will have no incentive to deploy service in these areas, which typically are the areas most lacking in wireless coverage. Beyond plans for expansion, many wireless carriers will have to consider whether the economic case exists to continue existing service in these areas.

The sole purpose of providing competitive ETCs with a specific percentage of incumbent ETC costs on a per-line basis, or eliminating ICLS or IAS solely for competitive ETCs, would be to limit the amount of support available for competitive networks that benefit consumers. No justification exists for this, nor has the Commission attempted to provide any such justification. If adopted, these proposals would directly harm the ability of competitive ETCs to compete for customers in insular, high-cost, and rural areas, and would mitigate competitive pressures in

²⁷ No detailed rules for classifying costs of competitive ETCs would be necessary.

²⁸ 23 FCC Rcd. at 1477, ¶¶ 23-24.

²⁹ *Joint Explanatory Statement*, 12 FCC Rcd at 87, ¶ 23.

incumbents. As such any plan to simply slash ETC funding by a certain percentage would be “arbitrary and capricious” in violation of 5 U.S.C. § 706(2)(A).

V. THE RECORD DOES NOT CONTAIN ANY EVIDENCE OF A VIABLE COST MODEL

When developing the current universal service support mechanisms in 1997, the Commission determined that “a forward-looking economic cost methodology for rural carriers should not be implemented until there is greater certainty that the mechanisms account reasonably for the cost differences in rural study areas.”³⁰ However, in the more than ten years since the *First Report and Order*, the Commission has not developed a workable cost model for providing universal service support, and nothing suggests that any viable models will be developed in the near future.³¹ To the extent the FCC wishes to consider any proposed cost model, the agency should continue to distribute support pursuant to the identical support rule while the model is tested.³²

VI. THE FCC SHOULD NOT ADOPT A REVERSE AUCTION REQUIREMENT

Reverse auctions are unproven, and the proposals of Verizon and CTIA are fundamentally inconsistent with the provisions of the Act. The vast majority of the reverse auction proposals in the record are not designed to achieve the goals of the Act, and they would not be competitively or technologically neutral. Specifically, any proposal that would award support to a single winner or only two, or that would differentiate between carriers based upon technology or competitive position is fundamentally inconsistent with the legislative purposes of promoting competition and new technologies development, as well as the principles set forth in section 254(b) and the principle of competitive neutrality.

³⁰ *USF First Report & Order*, 12 FCC Rcd at 8945, ¶ 313.

³¹ *Id.*; see also *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, 19 FCC Rcd 11538, ¶ 1 (2004) (*Rural Referral Order*); see also *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Fourteenth Report and Order and Twenty-Second Order on Reconsideration, Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, CC Docket No. 00-256, Report and Order, 16 FCC Rcd 11244, 11310 (2001) (*Rural Task Force Order*); *Federal-State Joint Board on Universal Service; High-Cost Universal Service Support*, CC Docket No. 96-45, WC Docket No. 05-337, Order, 21 FCC Rcd 5514 (2006) (extending Rural Task Force plan).

³² The concept of providing support based on a properly developed forward-looking model has already been approved by the Commission and one model is use today. Today’s technology permits far more accurate models to be developed than were in use ten years ago.

Reverse auctions would be complicated and expensive to administer. To the extent the FCC moves forward with a reverse auction proposal, the agency must conduct limited trials to determine the viability of the mechanism. During the trial period, the identical support rule should be maintained for all non-participating regions, and the interim cap should be removed. The trial auction should be conducted in a manner that would avoid single winner auctions, and that would be competitively and technologically neutral, allowing all eligible carriers to participate. Upon completion of a trial period, and assessment of the resulting marketplace of telecommunications options for consumers, and whether the intended goals of universal service have been effectively met, the Commission could examine the results and determine whether or not reverse auctions should be deployed on a wider basis.

VII. THE RECORD ON REFORM OF THE CONTRIBUTION MECHANISM IS INCOMPLETE

Various parties have expressed support for a numbering-based contribution methodology, despite the Commission's failure to specify how such a methodology would work.³³ In fact, until Verizon and AT&T's ex parte filing of September 11, 2008, no party had attempted to describe in any detail how a numbering-based contribution methodology would work. The consequences of imposing a radically different contribution methodology without providing a detailed description of the proposed reform for public comment could be grave. Unintended consequences could include, among other things:

- Unreasonably high end-user charges resulting from arbitrage by end users and service providers to evade the contribution requirement;
- Unreasonably high costs and burdens imposed upon service providers attempting to modify their billing, reporting, and administrative systems to implement the new methodology; and
- Ambiguity that creates uncertainty and competitive disparities.

These potential harms can be avoided if the FCC first publishes a detailed reform proposal and then requests comment from the public on it rather than rushing to meet an arbitrary deadline after years of inaction. Nonetheless, the USA Coalition submits these comments regarding the

³³ AT&T and Verizon Joint Proposal, *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, WC Docket No. 0-337, CC Docket No. 96-45 (filed Sep. 11, 2008) (proposing a numbers based contribution mechanism); Ex Parte Letter of Global Crossing, *Federal-State Joint Board on Universal Service*, CC Docket 96-45 (filed Sep. 18, 2008) (generally supporting the Verizon universal service and intercarrier compensation proposals).

Verizon-AT&T numbering proposal in the event the FCC chooses to adopt a numbers-based contribution methodology without proposing its own rules and seeking comment from the public.

Based upon conversations with AT&T, the USA Coalition understands that the Verizon-AT&T proposal is a pure numbers-based proposal rather than a numbering/connections hybrid proposal. The Coalition supports a pure numbering- or connections-based contribution mechanism over a hybrid mechanism, because the imposition of a hybrid mechanism would be doubly complicated and cause service providers to suffer the detriments associated with both systems without resulting in any offsetting benefit. Specifically, under a hybrid system, service providers would have to adopt all changes and incur all burdens associated both with numbering and connections methodologies.

The USA Coalition also understands that the intent of the Verizon-AT&T proposal is to minimize exemptions from the contribution mechanism to the greatest extent possible, which the Coalition supports. Excessive exemptions would be too burdensome to track, report, and audit. Moreover, the exemptions would create disparities among end users and service types, as well as raise the amount of contributions required from non-exempted end users. The exemptions would also introduce a greater degree of unpredictability of the system.

Finally, the USA Coalition understands that the Verizon-AT&T proposal is based on the assumption that contributions would be collected for every number that is assigned to a person or entity in a manner that grants the person or entity exclusive rights to control the number for a substantial period of time (*e.g.*, longer than one month), without regard to the type of service with which the number is associated or the type of service provider that provided the number. The Coalition supports this principle as consistent with the Act's mandate that universal service mechanisms be technologically and competitively neutral.

With these understandings, the USA Coalition recommends the following clarifications of, and modifications to, the Verizon-AT&T proposal. First, the definitions proposed by Verizon and AT&T are too ambiguous. Clear definitions are crucial for creating certainty and reducing burdens for service providers and regulators, which will also reduce the opportunities for arbitrage. Accordingly, the Coalition recommends the following definitions:

- Assessable Number – a North American Number Plan (NANP) telephone number that enables an end user to receive calls from, or place calls to, the public switched telecommunications network.³⁴

³⁴ As explained in greater detail below, contributions would not be required for every assessable number. Rather, the term “assessable number” would describe the type of number for which a contribution would be required if assigned to an “assessable number end user.”

- Assessable Number End User – the person³⁵ with the exclusive right to receive calls to, or place calls from, an Assessable Number for a period of one month or longer.³⁶
- Contributor – the service provider that assigns an Assessable Number to an Assessable Number End User. The Contributor would be the service provider immediately preceding the Assessable Number End User.
- Non-Assessable Number – an otherwise Assessable Number that a service provider has not assigned to a third-party Assessable Number End User and any number that does not meet the definition of “Assessable Number.”

Each month, each Contributor must determine how many of its Assessable Numbers are assigned to Assessable Number End Users and thus subject to a contribution obligation (the “Monthly Count”).³⁷ The methodology used to determine the Monthly Count must be reasonable, consistent from month-to-month, and fully auditable. Within 30 days of the end of each quarter, each Contributor must pay to USAC an amount equal to its Monthly Count for each of the months in the previous quarter multiplied by the FCC determined Assessable Number Charge. Consistent with the current rules, Contributors should be permitted, but not required, to recover contributions from Assessable Number End Users. Contributors also should be required to make biannual NRUF filings consistent with the current rules.

In order to minimize the costs and burdens associated with generating, reporting, reviewing and auditing Monthly Counts, the FCC should create a safe harbor that permits Contributors to calculate the quantity of numbers upon which they must contribute (*i.e.*,

³⁵ The term “person” would be defined as “any individual, group of individuals, corporation, partnership, association, unit of government or legal entity, however organized.”

³⁶ An Assessable Number End User can permit other persons to exercise its rights to receive calls to, or place calls from, the Assessable Number.

³⁷ Only numbers that meet the definition of “Assessable Number” and are assigned to an “Assessable Number End User” on the date the Contributor generates its bills would be included in the Contributor’s Monthly Count and thus subject to contributions. The responsibility for an Assessable Number being ported to or from another service provider would be determined by the status of the Assessable Number on the date the respective bills are generated.

Assessable Numbers assigned to Assessable Number End Users) on the date(s) they generate bills to their Assessable Number End Users.³⁸

Any service provider that assigns Assessable Numbers to a third party should be deemed to be the Contributor for those numbers unless the assignee provides the service provider with a "Contributor Certification." A Contributor Certification must include a sworn declaration that the certifier will:

- Serve as the Contributor for the numbers covered by the Contributor Certification ("Covered Numbers");
- Comply with the FCC's USF rules; and
- File its own NRUF as the "intermediate carrier" for the Covered Numbers (*i.e.*, report its own utilization for the numbers).

Upon receiving a Contributor Certification, a service provider should have no further USF obligations with respect to the covered numbers apart from classifying them as "intermediate numbers" on its NRUF reports. Finally, any numbers-based contribution plan adopted by the Commission will require a transition period of at least 24 months to permit the modification of billing, numbering, reporting, and administrative systems.

VIII. UNIVERSAL SERVICE SUPPORT SHOULD NOT BE USED TO SHIELD CARRIERS FROM THE ECONOMIC IMPACT OF INTERCARRIER COMPENSATION REFORM

Several parties, including AT&T, NTCA, USTA, and Windstream, have urged the Commission to reform intercarrier compensation, but only if the agency uses the USF to insulate them from the economic impact of reform.³⁹ These carriers all want universal service support to defray a portion of local landline carriers' annual revenue losses resulting from any mandated intercarrier compensation rate decreases. In their comments, these carriers disguise their intentions by describing their proposal as ensuring "revenue neutrality." However, the universal service program is not designed to ensure revenue neutrality. Rather, the support provided by the mechanism is for the benefit of consumers, not carriers.⁴⁰ It does not matter which carrier

³⁸ The responsibility for an Assessable Number being ported to or from another service provider would be determined by the status of the number on the date the bills are generated.

³⁹ NTCA Comments at 5; USTA Comments at 4; Windstream Comments at 12; Missoula Plan at 63.

⁴⁰ *Alenco Communications, Inc. v. FCC*, 201 F.3d 608, 622 (5th Cir. 2000) ("The purpose of universal service is to benefit the customer, not the carrier.").

receives support, so long as consumers have access to services. The Commission should reject such calls to shield specific carriers from the economic impact of intercarrier compensation reform.

The use of universal service funds to protect any specific carrier's revenues is inappropriate, particularly in a competitive market. Such proposals are little more than pleas to move billions of dollars in access revenues that may be at risk due to increased competition into protected funds accessible only by the incumbent LECs. Specifically, the proposals request the FCC to set aside a huge portion of USF funds, more than 40% of which are provided by competitive ETCs, and designate them solely for the use by incumbent LECs. The use of universal service support in this manner would be fundamentally inconsistent with the Act's mandate of a "pro-competitive, de-regulatory national policy framework"⁴¹ and would also violate the principle of competitive neutrality, which is a key part of policy framework mandated by the Act.⁴² As the USA Coalition has explained in past filings, the FCC must not use the universal service fund to shield specific carriers from the economic impact of intercarrier compensation reform.⁴³

⁴¹ *Federal-State Joint Board on Universal Service*, Recommended Decision, 12 FCC Rcd 87 at ¶ 23 (1996) (*Joint Explanatory Statement*) (cited in *First Report & Order*, 12 FCC Rcd at 8802, ¶ 48); see also Letter from Senators Rockefeller, Pryor, Dorgan, Klobucher, and Smith, to Commissioner Tate and Oregon PUC Chairman Baum (May 21, 2007) ("It seems worthwhile to us ... [to] seriously consider competitively neutral proposals, ensure accountability for how funds are used, and promote build out of advanced services in rural regions through effective targeting of funds to high-cost areas.").

⁴² *See Alenco Communications, Inc.*, 201 F.3d at 616 ("The [USF] program must treat all market participants equally – for example, subsidies must be portable – so that the market, and not local or federal government regulators, determines who shall compete for and deliver services to customers.").

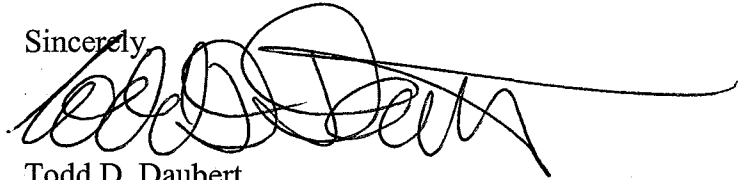
⁴³ Reply Comment of the USA Coalition, *Petition of AT&T Inc. for Interim Declaratory Ruling and Limited Waivers Regarding Access Charges and the "ESP Exemption"*, WC Docket No. 08-152 (filed Sep. 2, 2008).

Chairman Kevin J. Martin
September 30, 2008
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IX. CONCLUSION

Consistent with the proposals set forth in this letter, the USA Coalition encourages the Commission to ensure that universal service support is made available in a technologically and competitively neutral manner so that technological innovation can be implemented into the communications network as rapidly and efficiently as possible.

Sincerely,

A handwritten signature in black ink, appearing to read 'Todd D. Daubert', with a long horizontal flourish extending to the right.

Todd D. Daubert
Counsel to the USA Coalition

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